



California Fair Political Practices Commission

August 14, 1989

James R. Fatland
City Councilmember, City of Ontario
303 East "B" Street
Ontario, CA 91764-4196

Re: Your Request for Informal Assistance
Our File No. I-89-419

Dear Councilmember Fatland:

This is in response to your letter requesting assistance concerning your duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Since your request refers to conduct that has already occurred, we cannot provide you with advice concerning that conduct. Regulation 18329(b)(8)(A), (copy enclosed) provides that formal written advice will be declined where the "requestor is seeking advice relating to past conduct." However, we can provide the following general guidelines in regard to future situations that may confront you.^{2/}

QUESTION

As an employee of the County of San Bernardino, may you participate in decisions of the Ontario City Council concerning San Bernardino County?

CONCLUSION

Your status as an employee of the County of San Bernardino does not create a disqualifying financial interest in a decision of the Ontario City Council concerning San Bernardino County.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

The City of Ontario is located within the boundaries of San Bernardino County. Consequently, the Ontario City Council is periodically confronted with issues that may financially affect San Bernardino County. You are an Ontario City Councilmember. In addition, you are employed by San Bernardino County as an analyst. You have recently become concerned that by virtue of your position with San Bernardino County, you may have a conflict of interest regarding all issues which are brought before the city council that may concern the county. You are seeking guidance regarding your responsibilities under the Act.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which the official has a financial interest. Section 87103 specifies that an official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

You are both an employee of and receive a salary from San Bernardino County. However, salary and reimbursement for expenses

or per diem received from a state, local or federal government agency is expressly exempted from the definition of "income" for purposes of the Act. (Section 82030(b)(2).) Thus, your salary from San Bernardino County does not create a conflict of interest with respect to decisions affecting the county. (Section 87103(c).)


In addition, because a local government agency is not an organization or enterprise operated for profit, it is, therefore not a business entity as defined by the Act. Your status as an employee of San Bernardino County will not create a conflict of interest concerning decisions affecting the county. (Section 87103(d); Section 82005; Darcy Advice Letter, No. I-87-296, copy enclosed.)

Thus, absent some other disqualifying financial interest as set forth in Section 87103, above, or some direct financial effect on you personally resulting from a governmental decision, you may participate in city council decisions concerning San Bernardino County. (Sampson Advice Letter, No. I-89-196, copy enclosed.) However, please note that our advice is limited to the Political Reform Act.

Should you have any further questions regarding this matter or a specific decision that you would like advice on, please feel free to contact me at (916) 322-5901.

Sincerely,

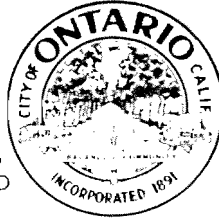
Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosure

CITY OF



ONTARIO

303 EAST "B" STREET

ONTARIO

CALIFORNIA 91764-4196

(714) 986-1151

HOWARD J. SNIDER
Mayor

July 13, 1989

DENNIS M. WILKINS
City Manager

JIM W. BOWMAN
LAYE MYERS DASTRUP
JAMES R. FATLAND
BRECHER MEDLIN
Council Members

DE LORES E. ARTERBURN, CMC
City Clerk

CHARLES L. MILHISER
City Treasurer

Fair Political Practices Commission
428 "J" Street Suite 800
Post Office Box 807
Sacramento, CA 95804-0807
Attention: Enforcement Division

Subject: Request for legal opinion

Gentlemen:

I am a City Councilman in the City of Ontario. I am employed full time by the County of San Bernardino as an Analyst.

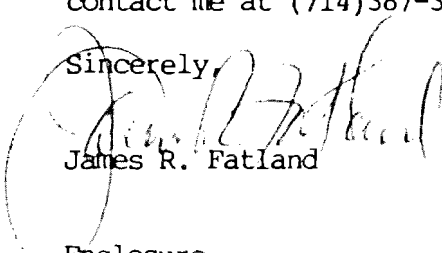
Prior to my vote at a recent City Council meeting, I requested an opinion from San Bernardino County Counsel (opinion enclosed) as to whether I had a conflict of interest on voting on an item affecting the county. County Counsel stated my position as a salaried employee would not be a conflict of interest.

The item before the City Council was whether or not the City of Ontario should sue the County of San Bernardino in challenging an Environmental Impact Report. The City Council voted 3 to 2 not to litigate.

I realize that in the future I should contact the FPPC prior to a vote regarding conflict of interest issues. I am writing to the Enforcement Division at this time to seek an evaluation and opinion on this matter.

If you have any questions or need additional information, please do not hesitate to contact me at (714)387-3057. Your prompt attention to this matter will be appreciated.

Sincerely,


James R. Fatland

Enclosure

FPPC
JUL 14 10 55 AM 1989

ALAN K. MARKS
County Counsel

ROGER N. KILHEW JR.
Assistant County Counsel

CRAIG S. JORDAN
RONALD D. REITZ
Chief Deputies County Counsel

County of San Bernardino

COUNTY COUNSEL

County Government Center
385 North Arrowhead Avenue
San Bernardino, CA 92415-0140
(714) 387-5455
Telecopier (714) 387-5430

July 11, 1989

DEPUTIES COUNTY COUNSEL

L. H. Robinson
Paul A. Grube, Jr.
Charles A. Duernick
Dawn Stafford
Charles J. Lorkin
Paul E. Mordy
Daniel B. Haueter
Ruth E. Stringer
Rev. A. Hinesley
Joanne Fenton
Susan A. Hopkins
Paul M. St. John
Paul A. Kramer, Jr.
Suzanna S. Cuneo
Susan Lindsay Nash
Erica L. Hedlund
L. Thomas Krahefski

James Fatland
Sr. Executive Analyst
Infrastructure, EPWA
385 North Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415

RE: CONFLICT OF INTEREST ISSUE

Dear Mr. Fatland:

You requested that we confirm in writing previous oral advice this office provided you concerning your participation as a city councilman of the City of Ontario in an issue impacting the County. You informed us that you serve as an elected councilman of the City of Ontario and in addition, hold regular employment with the County of San Bernardino as Sr. Executive Analyst in the Infrastructure Division of the Environmental Public Works Agency. You specifically inquired whether or not there was a prohibited conflict of interest given your county employee status and the simultaneous holding of the elected office of councilman which would preclude your participation in an issue before the City Council (Chino Agriculture Preserve) which impacts the County.

We advised that no legal conflict of interest under the Political Reform Act (Government Code Sections 87100, et seq.) was presented by the situation as long as you had no financial interest, as that term is defined in statute, in the decision or decisions made by the City of Ontario. As a salaried employee of the County, you are not deemed to have a financial interest in decisions which have a financial impact on the County because a salary received from the County is not considered income for purposes of the Political Reform Act (See Government Code Sections 87103(c) and 82030(b)(2)). Therefore, your mere employment by the County does not, in our opinion, disqualify you from participating in decisions as a city councilman which may impact the County.

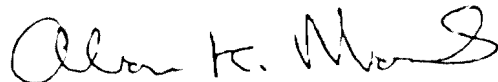
July 11, 1989

Since under the facts provided no contract between the City of Ontario and the County of San Bernardino was involved, Government Code Section 1090, et seq. would not apply in this case.

We did advise that there may be other reasons, policy or otherwise, which would militate against participation, and we also advised that you should seek the advice of the city attorney with respect to your participation in the city's decision-making processes.

I hope this letter adequately summarizes our previous advice to you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Alan K. Marks".

ALAN K. MARKS
County Counsel

AKM:mn

ARM:FATLAND

89-419



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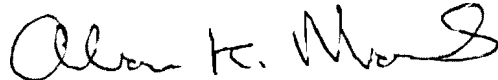
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I hope this letter adequately summarizes our previous advice to you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Alan K. Marks". The signature is fluid and cursive, with the first name "Alan" and last name "Marks" clearly distinguishable.

ALAN K. MARKS
County Counsel

AKM:mn

ARM:FATLAND



California Fair Political Practices Commission

July 18, 1989

Honorable James R. Fatland
City Councilmember
City of Ontario
303 East "B" Street
Ontario, CA 91764-4196

Re: Letter No. 89-419

Dear Councilmember Fatland:

Your letter requesting advice under the Political Reform Act was received on July 14, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh